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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to European Union institutions

Note by the Secretariat

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited European Union institutions in Brussels from 25 to 28 April 2016. The mission sought to consult in situ with relevant entities and actors in the European Union on the their work with respect to the activities of private military and security companies and foreign fighters, respectively, and their effects on human rights, particularly the right of peoples to self-determination.

On foreign fighters, the mission was undertaken at a time of heightened tension, following a series of attacks in European Union member States, the most recent of which had occurred on 22 March 2016 in Brussels, just a few weeks before the visit, and had claimed more than 30 lives. The visit was part of the Working Group's ongoing study of the foreign fighter phenomenon, which has included visits to Tunisia, Belgium and Ukraine, expert panels, expert meetings and a thematic report on the subject submitted in 2015 to the General Assembly (A/70/330).

During the visit, the Working Group learned that an estimated 5,000 to 6,000 nationals of European Union member States had travelled abroad to engage in combat, largely in the Middle East. Their motivations varied and ranged from reasons related to ideology, religion, a search for a sense of belonging or for adventure, as well as financial compensation or material gain.

A number of laws and measures addressing the issue of foreign fighters have been adopted by European Union institutions, essentially under the rubric of counter-terrorism. The Working Group commends the European Union on its efforts towards compliance with

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human rights obligations on issues such as protection of the right to privacy and expresses its concern with the human rights implications of other measures, such as freedom of movement, in the projected integration of Security Council resolution 2178 (2014) into a new directive.

The Working Group emphasizes that initiatives to address the issue of foreign fighters must ensure a balance between punitive security measures and preventive, more socially oriented efforts that address the root causes of the problem. It calls for there to be stronger links between human rights concerns and the foreign fighter response, and emphasizes that human rights concerns should be of greater consideration when conceiving and executing responses to the foreign fighter issue.

With regard to private military and security companies, the Working Group met with relevant officials of European Union institutions and learned about the reasons why such companies were excluded from the regulations laid out in the Services Directive.

The Working Group was encouraged by a report on regulating private military and security companies within the European Union, currently being prepared by the European Parliament Committee on Foreign Affairs Subcommittee on Security and Defence, for consideration by the European Parliament. This follows their 2011 paper on the role of private security companies in Common Security and Defence Policy missions and operations, and their public hearing in December 2015 on the use of private security companies in the context of European security and defence.

Furthermore, the Working Group was informed of the European Union internal institutional methods for blacklisting private military and security companies connected to possible human rights violations. It urges civil society actors to be actively involved in sharing related allegations with the relevant department of the European Union.

As the use of private military and security companies grows, both within the European Union and by companies registered within the European Union, concerns about the responsibility of transnational actors become ever more imperative. The Working Group calls upon Member States, European Union institutions and civil society actors to seize the nascent momentum to develop a strong architecture for preventing human rights violations and ensuring effective legally binding accountability and remedy for victims.

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to European Union institutions*

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* Circulated in the language of submission only.

I. Introduction

1. The Working Group on the use of mercenaries, represented by its Chair, Elzbieta Karska, undertook a visit to the European Union in Brussels from 25 to 28 April 2016. The Working Group wishes to thank the European Union for extending its invitation and expresses its appreciation for the meetings held with various representatives from the different functional entities and with members of civil society organizations. The Working Group also appreciates the support provided by the OHCHR Regional Office for Europe in Brussels for the visit.

2. The Working Group is mandated by the Human Rights Council to monitor mercenaries and mercenary-related activities. In that regard, it studies and identifies sources, causes, emerging issues, manifestations and trends not only concerning mercenaries as defined in international law, but also mercenary-related activities and their impacts on human rights, notably on the rights of peoples to self-determination. It is also mandated to monitor the activities of private and military security companies and their impact on human rights, particularly the right to self-determination.

3. Since 2014, the Working Group has been exploring possible linkages between the phenomena of mercenarism and foreign fighters and their impact on human rights and the right of peoples to self-determination. Its study on foreign fighters has involved country visits to Tunisia, Belgium and Ukraine, expert meetings, two public panels and its 2015 report to the General Assembly (A/70/330).

4. The Working Group's objectives for its visit to European Union institutions were to consult in situ with relevant entities and actors within the European Union on their work with respect to the activities of private military and security companies and foreign fighters, respectively, and their effects on human rights, particularly the right of peoples to self-determination.

II. Foreign fighters

A. Background and context of the visit

5. The visit came at a time of amplified tension for European Union institutions regarding the issue of foreign fighters. It followed the terrorist attacks in Brussels on 22 March 2016 that resulted in the deaths of 32 people and injured more than 300 persons. Responsibility for the attack, which took place at the airport and in a metro station close to European institution buildings, was claimed by the so-called Islamic State in Iraq and the Levant. The attacks came soon after a series of similar incidents in the region, including an attack at the Jewish Museum in Brussels in May 2014, the January 2015 raids in Verviers, Belgium, the attack on the headquarters of the *Charlie Hebdo* newspaper in Paris also in January 2015, and attacks in Paris in November 2015.

6. The Working Group was informed that an estimated 5,000 to 6,000 foreign fighters in conflicts in the Middle East had originated from European Union member States, mostly from the Belgium, France, Germany and the United Kingdom of Great Britain and Northern Ireland. While the flow of foreign fighters had reportedly slowed in around the previous 9 months, a marked increase had been observed in the participation of young people, with an average age of 20.5 years, including females.

B. Definition and scope

7. The Working Group uses the term "foreign fighters" to refer to individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-State armed group in an armed conflict. Foreign fighters are motivated by a range of factors, notably ideology or religious convictions. However, like mercenaries, a foreign fighter may also be drawn to a conflict abroad by the promise of financial gain or reward.

8. Unlike the term "mercenary", which is clearly defined in international law, there is no internationally agreed legal definition of foreign fighter or a specific regime governing them. Foreign fighters are, however, obliged to respect applicable rules of international humanitarian law during armed conflicts. In non-international armed conflicts, non-State armed groups, including foreign fighters, do not enjoy combatant immunity and may be prosecuted under domestic law simply for their participation in hostilities.[1]

9. The Working Group notes with some concern that there is similarly no operational definition of foreign fighter applied by the European Union. Current efforts seek to define the crime of travelling for terrorist purposes, which focuses on foreign terrorist fighters. While Security Council resolution 2178 (2014) includes a definition of foreign terrorist fighter, the Working Group notes that not all foreign fighters are foreign terrorist fighters, as not all foreign fighters target civilians or belong to terrorist groups. However, there is reason for concern that, as States seek to implement resolution 2178 (2014), they will equate "foreign fighter" with "foreign terrorist fighter".

10. On 2 December 2015, the European Commission adopted a proposal for a directive on combating terrorism that addresses the threats of foreign terrorist fighters and is part of its strategy to fight terrorism. It is complemented by other initiatives, including those seeking to tackle the root causes of terrorism.

11. The Working Group notes that the European Union has been applying the definition of terrorist offences for some 12 years. The Working Group believes that augmented clarity through a comprehensive definition of terrorism will enforce the principle of legality and potentially mitigate selective interpretation of offences and related criminal liability.

C. International and European Union law

12. Among the European Union member States, Belgium and Italy have ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Germany and Poland have signed, but not ratified, the Convention. All 28 European Union member States are, however, party to the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, article 47 of which defines mercenaries.

13. The Working Group would like to repeat the concerns it raised in its 2015 report to the General Assembly (A/70/330) that aspects of resolution 2178 (2014) are vague and overbroad, leading to potential infringement on human rights and other violations of international law. In particular, it impinges on the freedom of movement by effectively prohibiting travel to conflict zones, denying the return of States' own citizens or nationals and possibly restricting the scope of humanitarian action in conflict zones. Under the resolution, States may adopt powers to revoke citizenship, thus rendering persons stateless. They may also assume greater powers of surveillance and traveller risk assessment

[1] See the Working Group's assessment in its 2015 report to the General Assembly (A/70/330).

practices that violate the right to privacy. Similarly, interpretation of the resolution may lead to infringements of due process rights in the detention of suspects. In addition, in its resolution 2178 (2014), the Security Council does not acknowledge the application of international humanitarian law in armed conflict situations. It is important in this respect to understand that mere participation in hostilities by civilians, while subject to prohibition and punishment under domestic law, is not a violation of international humanitarian law, while terrorist acts (attacks on civilians and civilian objects) are indeed already prohibited.

14. It was stressed to the Working Group that counter-terrorism as a matter of national security is essentially a Member State competence, with prosecution for related offences undertaken by Member State courts. The Working Group calls on the European Union to encourage greater harmonization of response among its member States on the foundation of human rights, to eliminate the creation of options for foreign fighters to move their activity to countries with weaker regulations. Moreover, it promotes the establishment of a common European Union-level approach for ensuring remedies to victims. In this respect, the Working Group notes that the European Commission has indicated its intention to adopt an implementation report by 16 November 2017 on the protection of victims, as guaranteed by the victims' rights directive, granting certain minimum rights throughout the European Union.

D. Motivational factors

15. Authorities have reported motivations to be quite varied and individualized. Nonetheless, ideological and religious incentives apparently play a key role. The need for a sense of belonging, to be part of an exciting project or to gain a greater sense of achievement were also important motivational factors.

16. Financial compensation may also be a concern, if a less major one. Regarding payment, it is reported that wages are higher for European fighters and are in the region of $800-$1,200 per month, while recruiters may be paid $2,500 per month.

17. More recently, it has been reported by officials that salaries have been cut. Oil and natural gas revenues for terrorists in the Syrian Arab Republic and Iraq had accounted for some 500 million euros per year in the past, but now stood at half that owing to the diminishing price of oil. Furthermore, banks and other deposit points were being destroyed by airstrikes. Salaries, for example in Iraq, have reportedly been cut in turn. Many fighters are self-financing or may be funded by petty crime or family members. The Working Group learned that the main sources of financing for foreign fighter activity have been oil and natural gas sales, extortion, trafficking in persons and goods and the sourcing of funds directly through the foreign fighter network.

18. The Working Group was informed by authorities that the attacks in Paris and Brussels had been financed locally, including through Government unemployment welfare benefits. The attacks had been cheap to carry out, perhaps involving less than 5,000 euros, given that Kalashnikov rifles could be bought for roughly 200 euros, precursor materials also for a few hundred euros, with additional costs in car rental and hotel accommodation. Purchases by the perpetrators had been tracked through credit cards.

F. Recruitment

19. Recruitment has been observed as being largely through neighbourhood, peer and family networks and through the Internet and social media. It has been reported that contact with radicalized individuals in local communities increases the exposure and vulnerability

of a potential recruit to joining jihadist groups and travelling abroad to fight. Similar contact has been established and developed through radicalized friends or family members.

20. Easy access to jihadist websites has also facilitated the spread of jihadist ideology and recruitment into armed groups in Iraq and the Syrian Arab Republic. A number of European Union institution measures therefore target online propaganda and hate speech, notably through the European Union Internet Referral Unit. The European Union Internet forum also promotes effective alternative counter-narrative.[2] Efforts also address intervention at the local community level with training on counter-radicalization messages.

21. Another concern is radicalization and recruitment in prisons, prompting a programme by the Radicalization Awareness Network on this issue.

G. Measures

22. European Union institutions comprise a number of functional entities, some of which are more directly concerned with the issue of foreign fighters and have undertaken a number of measures, as outlined below.

23. The European Union proposal for a directive to combat terrorism reportedly attempts to provide a more comprehensive strategy to fight terrorism by focusing its definition of foreign fighters on those who commit terrorist-related offences. The proposal for the directive was adopted on 2 December 2015 following the terrorist attacks of 13 November 2015 in Paris. The proposal underlined the need to adapt the European Union legal framework to the evolving terrorist threat and aimed to translate international obligations into European Union law, namely, resolution 2178 (2014) on foreign terrorist fighters and the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism. The Working Group was informed that most of the provisions of the directive are already applicable at present (arts. 2-7 and 12-21).

24. In April 2015, the European Commission adopted the European Agenda on Security for the period 2015-2020 to support better cooperation between member States in the fight against terrorism, organized crime and cybercrime. In the Agenda, the Commission announced its intention to review and update the framework decision on terrorism in 2016, taking into account the provisions of the above Additional Protocol. This will take the form of a directive, currently under consideration. This follows the creation of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, which had been introduced by member States of the Council to implement resolution 2178 (2014). Framework Decision 2002/475/JHA on combating terrorism was amended by Framework Decision 2008/919/JHA, which required member States to criminalize public provocation to commit a terrorist offence, recruitment for terrorism and providing (but not receiving) training for terrorism.

25. The Working Group notes with concern that an impact assessment, including a human rights impact assessment, will not be undertaken for this directive, despite the fact that this is otherwise standard practice in the introduction of legislation for the European Union. It has been brought to the attention of the Working Group that the adoption process of the directive has not involved wide consultation with civil society actors.

26. The Working Group was advised that the reasons for this are the public urgency attached to responding to the perception of a growing foreign fighter threat, the assertion that it would not be necessary to do an impact assessment for legislation that has been made

[2] Communication from the Commission to the European Parliament, the European Council and the Council Brussels, 20.4.2016, COM(2016) 230 final.

mandatory, and that the new directive draws largely on pre-existing legislation and thus need not be assessed. The Working Group urges the European Commission, the Council of the European Union and the European Parliament to reconsider this approach, to acknowledge the procedural aspects of human rights and democracy and to make use of any time before the directive's adoption for consultations and human rights assessment.

27. Furthermore, the Working Group notes that in the directive acts are criminalized even if they are not directly linked to the principal offence of terrorism, and that there is a lack of clarity on the nature of intent related to an offence. The Working Group recommends the development of principles on how intent can be better established.

28. The European Commission mandated European standardization organizations to produce a "privacy by design" feature to assure protection of the right to privacy in technological designs related to security. It also proposed the Data Protection Directive for police and criminal justice authorities, adopted in April 2016.

29. The European Commission Directorate-General for Migration and Home Affairs has also created the Radicalization Awareness Network, comprising more than 1,200 experts who, inter alia, share best practices on addressing foreign fighters and undertake training on addressing returnees and preventing radicalization in prisons and on the Internet. They work with law enforcement, civil society and the judiciary.

30. The Committee on Civil Liberties, Justice and Home Affairs of the European Parliament adopted a non-binding report on 20 October 2015 related to the foreign fighters issue. The Committee recommended ways to discourage recruitment of European Union citizens as "foreign fighters" and called on European Union member States to step up judicial cooperation to that end. The strategy of discouragement should involve foreign policy, social policy, education policy, law enforcement and justice, with an emphasis on preventive rather than reactive measures and on respect for fundamental rights. On 14 April 2016, the European Parliament voted in favour of a passenger name record directive, which effectively regulates the transmission of passenger name record data by air carriers to member States, including on flights within the European Union.

31. The Working Group strongly supports the recommendations in the above-mentioned report. In its study of foreign fighters and corresponding country visits, the Working Group has emphasized the need for there to be a balance between preventive and social measures against security-oriented and punitive measures. In the particular context of the European Union, special attention must to be paid to efforts to integrate minorities and migrants and to the associated rights to equal treatment and access to opportunities. The Working Group urges that the passenger name record directive be implemented with explicit respect to the protection of the right to privacy by European Union member State citizens.

32. In 2005, the Council of the European Union adopted the Counter-Terrorism Strategy and established the position of European Union Counter-Terrorism Coordinator. The Coordinator drafted a series of 22 proposals, which were endorsed by the Council of the European Union Justice and Home Affairs Council in June 2013. These proposals are reflected in Security Council resolution 2178 (2014) of 24 September 2014.

33. The European External Action Service assists the High Representative of the Union for Foreign Affairs and Security Policy. Its Counter-Terrorism Division applies the Counter-Terrorism Strategy based on prevention, protection, pursuit and response and the updated terrorism action plan, and promotes a criminal justice approach on counter-terrorism that is reportedly based on human rights and the rule of law. This is reported to encompass an evidence-based approach as opposed to a confession-based approach to criminal justice. The European External Action Service coordinates counter-terrorism external outreach and capacity-building assistance to third countries by the European Union and its member States.

34. The Counter-Terrorism Division of the European External Action Service has undertaken three key steps in its work on the issue of foreign fighters: amplification, capacity-building and coordination.

35. Amplification and coordination entail dialogue with counterparts in the international community on counter-terrorism, with a focus on the Middle East and North Africa as countries of origin, transit and destination for foreign fighters. The European External Action Service supports the training of judges, parliamentarians and law enforcement officials on the premises of and by the International Institute for Justice and the Rule of Law in Malta. This is also done in cooperation with the United Nations Office on Drugs and Crime. Another approach supported by the European Union is the Global Fund for Community Engagement and Resilience, which funds grass-roots initiatives designed to mitigate and change conditions that have been proved to be conducive to terrorism.

36. Capacity-building initiatives have focused on training and the exchange of experiences, including issues as varied as cross-border pursuit, judicial cooperation and law enforcement, also with a focus on the Middle East and North Africa region.

37. The responses of the European Union to the challenges posed by foreign terrorist fighters include the following:

(a) Europol Focal Point Travellers agreement, with a data file also fed by non-European Union statistics;

(b) A "check the web" initiative that compares Internet content against the legal guidelines of Internet browsers;

(c) A strategic communication advisory team on the Syrian Arab Republic, with the participation of 23 European Union member States;

(d) Assistance in the Middle East and North Africa with a focus on implementing resolution 2178 (2014).

38. Regarding the above, the European External Action Service Counter-Terrorism Division advises that delivery is contingent upon adherence to human rights principles, such as prohibition against torture.

39. In terms of efforts at prevention, countering violent extremism is described as a priority by the European External Action Service, addressing the cycle from radicalization to returnee rehabilitation. Related work thus attempts to understand the push and pull factors. The Service also recognized the strong need for research on the conditions conducive to terrorism and for identifying indicators, in moving forward on countering extremism. These initiatives are further supplemented by endeavours on conflict prevention, early warning and mediation.

40. The European Union supports the work of the Hedayah institute, providing 5 million euros in grants for projects on returnees, strategic communication, research and indicators. On strategic communications, Hedayah works with companies that provide social media services. The European External Action Service promotes better communication with the Arab world and fosters related capacity-building for European Union delegations located in countries in the Middle East and North Africa.

41. The European External Action Service has identified Tunisia as one of its priority countries in the Middle East and North Africa region. It conducted an enhanced dialogue with key players and developed projects on preventing and countering violent extremism, on foreign terrorist fighters and on security reform, for which the European Union will contribute 23 million euros. This calls for careful coordination of all ongoing efforts on the ground.

42. The European External Action Service also works on countering financing for terrorism initiatives, with projects in the Middle East and North Africa and the Horn of Africa. Counter-terrorism efforts are also included for the Balkans, for countries being considered for participation in the future enlargement of the European Union, as part of the Instrument for Pre-Accession Assistance.

43. It has been reported that European arrest warrants have also been applied by European Union member States on occasion for foreign fighters.

H. Human rights implications

44. The Working Group notes that, in reacting to the pressure to develop a strong response to terrorist attacks in recent years, European Union laws and policies are being expedited, with implications for the protection of human rights.

45. Notably, the new draft directive on countering terrorism currently being considered is due to be adopted without the benefit of an impact assessment, including on human rights. This is contrary to the standard process for new laws and contradicts the specific statement by the European Commission in its communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled "The European Agenda on Security".[3] In the statement, the Commission announced that it would launch an impact assessment in 2015 with a view to updating the 2008 Framework Decision on Terrorism in 2016.

46. By not mapping and addressing potential human rights issues, the Commission allows for the possible emergence of such issues. Among those identified as particularly disturbing are the criminalization of acts ancillary to terrorism and the lack of clarity on the nature of intent related to an offence. The Working Group draws attention again to the above-mentioned communication, in which the Commission states that "all security measures must comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress". The Working Group calls upon the authorities of the relevant European Union institutions, including the European Commission, to apply its own principles in the case of the current draft directive.

47. The particular human rights concerns relating to resolution 2178 (2014) also need to be addressed. These include restrictions on the freedoms of movement, expression and opinion, and the right to privacy. The resolution also calls into question respect for international humanitarian law and any undermining of the corresponding legal regime in situations of armed conflict.

48. The arguments surrounding pre-existing law, urgency and the mandatory nature of adopting resolution 2178 (2014) do not supersede the individual legal obligations of European Union member States to respect, protect and fulfil human rights, as States parties to the International Covenant on Civil and Political Rights, and their collective responsibility under the Charter of Fundamental Rights of the European Union (notably articles 45 and 49).

49. The fundamental motivations of foreign fighters relating to the need for a sense of belonging may also correspond to concerns around perceived discrimination in European Union member States. This was recognized in the above-mentioned communication on the European Agenda on Security, in which the European Commission prioritized combating marginalization and promoting inclusion, and in the 2016 communication of the

[3] Available from www.cepol.europa.eu/sites/default/files/european-agenda-security.pdf.

Commission,[4] in which the Commission promoted projects to foster inclusion and intercultural understanding.

50. Similarly, in its action on countering violent extremism and promoting dialogue, the European External Action Service acknowledged the role of social factors. While these are necessarily long-term efforts, short- and medium-term initiatives, with concrete indicators developed through consultation with relevant communities, can also ensure application of the human rights-based approach and greater sustainability of impact.

51. Concerns over the right to self-determination may also apply insofar as the criminalization of ancillary offences may amount to hindering legitimate acts by peoples to seek to change their political regimes.

52. The Working Group draws attention to the fact that some foreign fighters are also children, thus entitled to the full range of regional and international children's rights and protections.

I. Returnees

53. The European Union has particular concerns regarding returnees, prompted by the coordinated attacks undertaken in the region by nationals of European Union members States returning from combat.

54. An estimated 30 per cent of foreign fighters return to their home countries.[5] A number of initiatives aim to track the movements of foreign fighters, including returnees. Plans to expand the features of the Schengen Information System and modifications to the Schengen Border Code will better ensure that information on travellers is captured.

55. As indicated above, the Radicalization Awareness Network and Hedayah, with funding from the European External Action Service, also provide projects for returnee rehabilitation.

J. Conclusions and recommendations

56. **In the aftermath of the terrorist attacks that struck at the heart of the European Union, there has been growing pressure to respond. The sense of urgency must not, however, allow for compromise in the protection of human rights. It must also ensure that the root causes of terrorism are addressed.**

57. **Notwithstanding the existence of human rights counter-terrorism guidelines, and the assertion of the application of the Charter of Fundamental Rights, the Working Group emphasizes that the reported commitment of the European Union to mainstream human rights into all of its approaches and activities, including in how resolution 2178 (2014) is promoted to third countries, must be realized.**

58. **The Working Group welcomes efforts to better understand the foreign fighter phenomenon, including research on motivating factors and the development of**

[4] Communication from the Commission to the European Parliament, the European Council and the Council on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union, available from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-security/legislative-documents/docs/20160420/communication_eas_progress_since_april_2015_en.pdf.

[5] Ibid.

indicators. It hopes that this will ensure a more even balance in the response to foreign fighters, one that covers preventive and punitive measures equally.

59. The fact that foreign fighters are often motivated by seeking a sense of belonging makes social factors of particular concern when addressing the phenomenon. Measures should specifically ensure effective integration of minorities and migrants.

60. The Working Group urges European Union members States to be mindful of their obligations as States parties to international instruments, including the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, which emphasize freedom from discrimination and equal access to employment and equal rights to participate in public life. It commends ongoing initiatives towards intercultural dialogue and mutual respect among communities.

61. The Working Group further supports enhanced information gathering, notably for registration in databases and information-sharing across departments, agencies and member States, such as the Schengen Information System and the new passenger name record directive. Information-gathering measures must include the explicit recognition of the right to privacy and related protections, for example securing the identity of persons entered into databases. In this respect, the Working Group acknowledges the potential usefulness of a "privacy by design" standard promoted in the European Agenda on Security, and the newly adopted Data Protection Directive.

62. In the interest of cooperation, the Working Group recommends that member States of the European Union avail themselves more systematically of the services of Eurojust. This should facilitate mutual legal assistance agreements and improved evidence gathering, including with third, non-European Union, countries. Similarly, more widespread application of the European Arrest Warrant can allow for useful cross-border action.

63. The Working Group recommends that the European Parliament Committee on Civil Liberties, Justice and Home Affairs consider the implications of the foreign fighter phenomenon for human rights in the European Union, and means for addressing them.

64. The Working Group also encourages the convening of public hearings by relevant committees of the European Parliament on human rights and the issue of foreign fighters, with a view to linking human rights to the issue of foreign fighters, as conceived and addressed at the European Union level.

65. The Working Group believes that recent events have brought the European Union to an important juncture in its approach to security and defence. This approach must be firmly anchored in the foundation of human rights and democracy, which it so fundamentally enshrines and promotes.

III. Private military and security companies

A. Background and context

66. The Working Group has, since its establishment in 2005, been mandated to monitor and study the effects on the enjoyment of human rights, particularly the right of peoples to self-determination, of the activities of private companies offering military assistance, consultancy and security services on the international market (see Commission on Human Rights resolution 2005/2 of 7 April 2005).

67. The Human Rights Council, in its resolution 30/6, and the General Assembly, in its resolution 70/142, requested the Working Group to consult States, intergovernmental and non-governmental organizations and other relevant actors of civil society in the implementation of those resolutions, and to report to them. The Council and Assembly recommend that all Member States, including those confronted with the phenomenon of private military and security companies, as contracting States, States of operations, home States or States whose nationals are employed to work for a private military or security company, contribute to the work of the separate open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies, taking into account the work done by the Working Group.

68. The Working Group provides resource persons to the open-ended intergovernmental working group, which has considered a draft convention on private military and security companies and concept note on elements of a convention, both prepared by the Working Group. Neither the draft convention nor the concept note have received support from the open-ended intergovernmental working group.

B. Activities of private military and security companies

69. The European Union employs private security companies in both its civilian and police missions and its military operations. Civilian missions having used such companies, largely for protecting their premises and/or as bodyguards, include the European Union Rule of Law Mission in Kosovo,[5] the European Union Police Mission in Bosnia and Herzegovina, the European Union Coordinating Office for Palestinian Police Support and the European Union Police Mission in the Democratic Republic of the Congo.

70. Private contractors have supplied a wide variety of services to support European Union military operations, with justifications including troop limitations, lack of specific capabilities and financial constraints. These operations include the European Union military operations in the former Yugoslav Republic of Macedonia, the Democratic Republic of the Congo, Bosnia and Herzegovina, the Gulf of Aden, Chad, the Central African Republic and Somalia.[6]

71. More recently, European Union missions in Mali and the Mediterranean have reportedly contracted private air transport services.

72. In most cases, military support services are contracted by the member States involved in the military operations, each of which applies its specific national legislation. Services provided encompass, for example, private guarding of installations and personnel, provision of helicopters, logistical support, maintenance and translation.

C. Human rights implications and international law

73. The Working Group again expresses its concern that the different standards in national legislation and policies concerning the use of private security companies make for patchy and inconsistent regulation at the European Union level. Differences may be observed in, for example, licensing and registration of such companies, selection and

[5] See "The Role of Private Security Companies in CSDP Missions and Operations", p. 13, available from www.europarl.europa.eu/RegData/etudes/etudes/join/2011/433829/EXPO-SEDE_ET(2011)433829_EN.pdf.

[6] Ibid., p. 14.

training of personnel, permitted and prohibited activities and rule on the acquisition of weapons. The Working Group urges harmonization of regulations to ensure even standards across the region and to move towards predictable accountability for human rights violations.

74. While the information on the impact of private security companies on the ground at mission locations is limited, there are common concerns about the impact that the use of such companies has on human rights. Among those concerns is the clear distinction between security and military services. The Working Group is not aware of any definition applied in European Union legislation that clarifies this distinction, but it nonetheless has legal significance, notably for the application of international humanitarian law to contexts of armed conflict.

75. The argument is often made that private security company personnel are not engaging in conflict if they employ defensive, rather than offensive, use of force. However, if such personnel are knowingly and willingly guarding a military objective in armed conflict, they are directly participating in hostilities and are targetable. On the other hand, if the personnel are guarding civilians or civilian objects, they are not targetable. The recognition of that distinction should guide contracting and regulation, and has implications for accountability of personnel under international law for violations committed.

76. Also of concern is the varying accountability for human rights violations in third countries by private military and security companies originating from European Union member States. During the Working Group's visit, officials made the argument that national jurisdictions would ensure accountability through local procedures and courts. However, the Working Group asserts that many countries in armed conflict, and others that serve as locations for the activities of private security companies, do not have robust enough State structures and judicial functioning to assure access to justice for victims of violations.

77. The European Union, however, emphasized its strong support for the implementation of the Guiding Principles on Business and Human Rights, which also apply to private military and security companies. The upcoming European Union action plan on responsible business conduct will address the implementation of the Guiding Principles, including with regard to due diligence and access to remedy. The European Union also welcomed the ongoing efforts by the Office of the United Nations High Commissioner for Human Rights on enhancing accountability and access to remedy, and the recent report of the High Commissioner on improving accountability and access to remedy for victims of business-related human rights abuse,[8] recognizing that the initiative may provide best practices that can be implemented at the European Union and member State levels, including on improved cooperation between States in cross-border cases.

D. Regulation of private military and security companies

78. The key approach to the contracting of private security companies within the European Union is reportedly through procurement procedures that involve the possible exclusion of companies whose records do not meet European Union stipulations. All security contracts include an explicit reference to the Montreux document and International Code of Conduct.

79. The Working Group was advised that the European Union relies on civil society input to the development of the blacklist, notably conveying any allegations or legal

[8] A/HRC/32/19.

proceedings about private military and security companies or their personnel. The Working Group urges greater awareness-raising by the European Union about this platform and its related processes, and encourages civil society actors to actively participate.

80. The European Court of Justice has established the competence of the European Commission over private security companies in several rulings that identify private security services as an "economic sector". As such, the Working Group learned during the mission that European Union level regulation was also viewed with some reluctance because of perceived potential to cause internal market distortions.

81. The Council of the European Union decided in 2006 to exclude private security services from the directive on services in the internal market. The Working Group learned that this decision was taken upon the request of representatives of the private security industry who argued that it would not support their business. As such, the sector remains unregulated in the European Union market. The Commission was tasked instead with assessing the possibility of presenting a separate proposal for the harmonization of regulations concerning private security services by 28 December 2010.

82. The European Parliament has been in favour of harmonizing member States' regulations of the private security sector, and the Council adopted on 13 June 2002 a recommendation regarding cooperation between the competent national authorities of member States responsible for the private security sector. In 2011, the European Parliament's Directorate General for External Policies published a report on the role of private security companies in Common Security and Defence Policy missions and operations, which urged the development of appropriate mechanisms to address the possible problems of such companies use before they occur, such as decreased democratic accountability and governmental control, the perceptions of contractor impunity, and insecurity among the civilian populations of host States.

83. The Parliament further recommended the creation of a common list of military and security services; common guidelines for the hire, use and management of military and security contractors in Common Security and Defence Policy operations; a directive (Internal Market) setting minimum standards for private security service providers within the European Union; a Council decision (Common Foreign and Security Policy), regulating the export of private military and security services, as defined in the Common Service List, to destinations outside the European Union; and Council decisions (Common Foreign and Security Policy) including military and security services into European Union embargoes.[9] The Working Group was not made aware of any action on any of these recommendations.

84. In December 2015, the European Parliament convened a public hearing in Brussels on the use of private security companies in the context of European security and defence, organized by the European Parliament Committee on Foreign Affairs, Subcommittee on Security and Defence. The Working Group supports the European Union public dialogue on the activities of private military and security companies, particularly regarding their impact on human rights.

85. The Working Group learned during its visit that the European Parliament Sub-Committee on Security and Defence is preparing an initiative report on European Union regulation of private military and security companies for possible consideration by parliament. It urges the relevant parties to ensure that the process brings about active discussion and informed decision-making on the issue.

86. The Working Group was also apprised of both political and procedural challenges to the development of European Union level regulation of private military and security

[9] Ibid., p. 39.

companies. It is aware that changing the Services Directive may be politically onerous and time-consuming. Also, any legislation issued at the European Union level has to respect the principles of attribution subsidiarity and proportionality as reflected in European Union law.

87. Nonetheless, there seems to be some early momentum towards the deliberation of a European Union level approach. Member State concerns regarding state monopoly on the use of force, on economic consequences, or otherwise, need to be openly aired and robustly addressed in European Union institutions, by the European Parliament and or the European Commission and or the European External Action Service.

88. Such efforts should draw upon all sources of relevant research, evidence and information, providing arguments and counter-arguments for all options, and in different progressions. Greater consideration by European Union institutions could be given to voluntary regulation, model laws, expanded jurisdictions and a global convention for universal application, examining national, regional and international approaches. Ultimate consideration for accountability and for the protection of victims and potential victims of human rights by private military and security companies should guide decision-making in this regard.

89. In July 2012, the European Union, as an international organization, joined the Montreux Document and 23 of its member States support the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict, a non-binding instrument composed of two parts. Part one reiterates the obligations of States and private military and security companies under international law. Part two outlines a wide range of good practices for contracting States regarding the hire, use and oversight of private security companies. During the 2014 meeting of the Montreux Document Forum, the European Union, as an international organization, was elected to become a member of the Group of Friends of the Chair. The European Union is also a strong supporter of the International Code of Conduct for Private Security Service Providers and the requirements of the International Organization for Standardization on a management system for private security operations (ISO 18788).

E. Conclusions and recommendations

90. **The Working Group underscores that the transnational nature of the activities of private military and security companies compels supranational action for regulation. While it was made clear during the mission that the primary responsibility for security rests with member States, this approach cannot fully or effectively counter cross-border organizations, actors or actions.**

91. **The Working Group acknowledges the practical and preliminary value of volunteer efforts concerning international regulation, including the International Code of Conduct. At a minimum, and with a view to improving the accountability of private military and security companies for their activities, the Working Group calls on the European Union to encourage consideration of legislation that would require all such companies registering in, operating in, or under contract to European Union member States to maintain membership in good standing in the International Code of Conduct for Private Security Service Providers' Association.**

92. **However, these initiatives are non-binding and voluntary, with no significant penalty for non-compliance or for the commission of human rights violations, beyond being expelled from the International Code of Conduct for Private Security Service Providers' Association and losing out on valuable contracts. In countries in armed**

conflict, or those with weak State structures, this amounts to negligible accountability for violations.

93. The Working Group's ongoing global study of national regulations on private military and security companies further demonstrates that there are gaps in all geographic regions in the accountability covered by national legislations and variation among them. An international legally binding instrument would ensure consistent standards across regions. It would require States to implement measures to ensure registration and licensing of private military and security companies, adequate vetting and training, including in human rights. It would further establish a mechanism for monitoring the activities of those companies, lay down the scope of prohibited and permissible activities, foster mutual legal assistance and expand jurisdiction for accountability and remedy for victims.

94. The Working Group encourages the European Union, in the context of its participation in the open-ended intergovernmental working group established by the Human Rights Council, to urge its member States to consider the possibility of an internationally binding instrument for the regulation of private military and security companies, to acknowledge that the existing mechanisms to regulate the private military and security industry, including domestic law, the non-binding Montreux Document and the voluntary International Code of Conduct, are inadequate to assure compliance with international law and that additional international regulation is therefore both warranted and necessary.

95. The significant role of private military and security companies in European Union activity should prompt key European Union actors to seize the opportunity for advancement on an issue with profound implications for human rights protection within and outside the European Union.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Belgium

Addendum

Comments of the Government of Belgium to the report of the Working Group*

* The document is circulated as received.

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A. Executive Summary

1. In recent years, the world has faced a new form of threat, based on the fundamental rejection of democracy and human rights and fueled by feelings of hatred with a variety of causes at their core. The scourge of terrorism has made innocent victims across the world, of all ages, ethnicities and creeds, including in Belgium. On March 22nd, Belgium was the target of multiple attacks and experienced one of the darkest days in its recent history. Like many other countries targeted by this latest form of terrorism, Belgium is an open and democratic society with Human Rights and Fundamental freedoms at its core. Committed to protecting our citizens and all those who have chosen Belgium as their home, we remain firmly resolved to protect those values in our response to terrorism. Like other countries, Belgium is indeed confronted with a number of challenges in the fight against violent extremism and terrorism, but it has always stood ready to take up its responsibility and will continue to do so in the future. The Belgian authorities have decided for a resolutely holistic approach to the matter, where prevention, repression and duty of care go hand in hand.

2. For more than a decade, the Belgian authorities from all branches of power, have been working on the issue of hate speech and prevention of radicalization as well as on the reinforcement of legal and other frameworks to address the challenges posed by terror in all its forms, both at the domestic and international level. The threat of terrorism, and particularly the issue of Foreign Terrorist Fighters (FTF) is at the center of a series of coordination mechanisms at the international level in which Belgium is fully engaged. We are also keenly aware of the necessity to mainstream human rights in any policies or measures developed in the fight against extremist violence and terror, as demonstrated by Belgium's active engagement on and co-sponsoring of Human Rights Council and 3rd Committee resolutions that address this particular concern and reaffirm States' responsibilities and commitments in this regard. Belgium is also actively engaged on this issue at a regional level. It is under the Belgian Chairmanship of the Committee of Ministers of the Council of Europe that the Council of Europe adopted its Action Plan on the fight against violent extremism and radicalization leading to terrorism, and the Additional Protocol to the Convention on the Prevention of Terrorism, specifically aimed at addressing the FTF challenge in line with the three pillars of the Council: human rights, democracy and the rule of law. Belgium is also very active in this field at the EU level.

3. A number of consultation and coordination mechanisms to address the issue were also developed within Belgium in recent years, particularly on prevention of radicalization and violent extremism in a wider sense. The exchange platform set up by the Federal Ministry of Interior dedicated to prevention bringing together all the relevant protagonists from federal, regional, community and local level on a regular basis is a good example of such cooperation. It enables authorities from all levels to exchange on both general and local policies as well as specific challenges they face. Other more specialized platforms have also been created to bring together experts around specific issues, such as communication and the development of counter-narratives. Expertise platforms also exist within the different regions/communities of Belgium so as to garner all the expertise at that level and at the level of cities and municipalities. As opposed to prevention initiatives, legal and judicial initiatives and proceedings such as investigation and prosecution of acts linked to terrorism are all concentrated at the federal level. A number of policies have also been developed recently in this field to ensure that the issue of FTF be addressed in a coherent and efficient manner, in full respect of Belgium's human rights commitments in the framework of the United Nations, of the European Convention of Human Rights and of the Charter of Fundamental Rights of the European Union.

4. both in Belgium and elsewhere has indicated that the profiles of radicalized individuals vary enormously, as do the root causes that seem to push them onto the path of violent extremism. This entails that highly centralized policies to address the issue do not provide all the answers, especially when it comes to prevention. They have to be complemented with more tailor-made local initiatives that are more effective when implemented in proximity with the groups identified as vulnerable to radicalization. The Belgian federal structure offers a great deal of flexibility to develop grass-roots best practices in which local authorities, such as the cities or municipalities, play a central role. The Belgian authorities at all levels are convinced that our institutional organization can be an asset in the fight against violent extremism and terrorism and specifically in terms of preventive action.

5. Human rights, rule of law and democracy are principles that lie at the basis of Belgian society and are guaranteed by the Constitution, which explicitly mentions that the "enjoyment of the rights and freedoms recognised for Belgians must be provided without discrimination. To this end, laws and federate laws guarantee among others the rights and freedoms of ideological and philosophical minorities". It is in this spirit that a number of laws have been adopted and institutions created to ensure that these principles are implemented fully in practice and that individuals who feel that their rights have been violated have access to effective complaint mechanisms and remedy. Since the creation of the United Nations, Belgium has been at the forefront with regards to human rights commitments as illustrated by its active engagement in the work of the Human Rights Council, the Universal Periodic Review, as well as its unwavering support for special procedures and treaty bodies. This commitment to human rights is implemented in our national policies where human rights, democracy and rule of law remain the ultimate benchmarks to which all policies and actions are measured.

6. The Belgian government as well as the governments of the federated entities are committed to guaranteeing a safe, open, inclusive and peaceful society. They do so by developing a smart mix of legal and policy measures that punish hate speech, incitement to violence, xenophobia and anti-Semitism and strive to provide a level playing field and a dignified livelihood for all, guaranteeing possibilities of recourse for those individuals who feel they are being discriminated against. A number of measures have been put in place over the past decades but also in the aftermath of the FTF phenomenon, ranging from projects to promote diversity to hotlines and resilience tools for youth, social workers and families. The Belgian authorities also recently created a permanent dialogue structure with the representatives of all officially recognized beliefs in Belgium, including Islam, to enable all concerned parties to exchanges views on a variety of topics, including integration. This is one of a variety of actions that have been taken over the years to ensure the integration and peaceful cohabitation of the main religions and beliefs present in Belgium and their followers. It is in this context that Islam was granted the status of officially recognized religion in Belgium in 1974 and that the Muslim Executive, representing the recognized practitioners of the Muslim faith in Belgium, was set up in 1996. Aware of the tensions and misgivings that can arise amongst citizens in the aftermath of the attacks, preventive measures are now also being put in place not only to ensure that vulnerable youths do not take the path of violent extremism, but also to ease tensions amongst communities and to reconfirm diversity as the heart of our model of peace and prosperity. The initiatives mentioned above are just a few of many important measures and realities the Belgian authorities feel were regrettably left out in the analysis made by the Working Group and should be mentioned here.

B. Introduction

7. The government of the Kingdom of Belgium welcomes this opportunity to respond to the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination [hereunder referred to as 'the Working Group'] on its mission to Belgium in October 2015.

8. As illustrated by the standing invitation we have addressed to the Special Procedures since March 2001, Belgium is and will remain a firm supporter of the Special Procedures of the Human Rights Council, which we consider as the eyes and ears of the Council. The Belgian authorities have in the past -and will continue in the future- to take into account recommendations made by the Special Procedures to better implement our international human rights commitments in practice. In order to do so, the Belgian authorities feel that such recommendations need to go beyond general statements and into precise and practical detail to be effective. We feel the apparently random use of statistics and a number of factual inaccuracies in the report by the Working Group on its visit to Belgium greatly impact the clarity of the report and its conclusions. More generally, the lack of precision in the description, analysis and recommendations makes the report more challenging to use in defining future policy.

9. Belgium continues to regret the lack of conceptual clarity in the mandate of the Working Group, which it has already voiced bilaterally as well as alongside the EU and its Member States. Mercenaries are clearly defined under international humanitarian law and their activities are different from those of foreign fighters. As stated many times before, we are concerned that taking up such distinctive issues under one mandate will in no way work towards addressing human rights issues related to these challenges. Looking at the other recent activities of the Working Group, it would also seem that some degree of confusion exists on use of the terminology of "Foreign Fighters" itself. It should be noted that during the visit, the focus for the Belgian authorities was put on the issue of Foreign Terrorist Fighters (FTF). The issue of FTF is of a rare complexity as it takes up very different forms and is borne from a wide array of local, national and international dynamics that make it an entirely new challenge, particularly from a human rights perspective. As a result, in Belgium this phenomenon is not considered to be within the realm of mercenarism, and as was extensively explained during the visit, and both issues are dealt with in a very distinct manner both in law and in practice.

10. Throughout the report, the Working Group has focused on Belgium's federal structure and the impact this could have on the coordination of a response to radicalization and terrorism. Belgium's federal structure offers many opportunities when it comes to prevention of radicalization as, unlike very centralized states, it empowers local authorities and enables them to provide tailor-made approaches to radicalism, which can find its roots in a number of diverging factors. These approaches are shared and exchanged within an existing Prevention Platform that is convened by the Ministry of Interior and serves as consultation coordination mechanism between the different levels. A half-day seminar was organized by the Platform on the occasion of the visit of the Working Group, in attendance of prevention actors from all relevant levels ranging from the federal to the local level. The Belgian authorities regret that the report of the Working group does not take the existence of this essential platform into account when making its recommendations, notably on coordination mechanisms.

11. The government of the Kingdom of Belgium would also like to take this opportunity to provide information on some of the main policy measures that were initiated before and after the visit of the Working Group to Belgium but that the Working Group has omitted to mention in its report to the Human Rights Council. Our responses in some of the areas covered in the Working Group report are also set out below.

C. Policy Coherence

1. Judicial aspects

a. Global approach to terrorism on the side of the judiciary

12. The College of Public Prosecutors has issued (confidential) guidelines in 2005 with regard to prosecution of terrorism, which are currently under review. In 2015, the College has also issued specific guidelines regarding the prosecution in the framework of the FTF phenomenon. Generally speaking, the judicial approach is of a global nature and does not focus on incarceration but rather the longer-term goal to prevent terrorism in general. This includes an important focus on de-radicalization and reinsertion in society in the framework of the prosecution policy, imprisonment and the use and implementation of alternative sanctions.

b. Circular notes prepared by the College of Public Prosecutors

13. As previously mentioned, there are different (confidential) circulars of the College of Public Prosecutors regarding the fight against terrorism, notably:

- The Joint Circular COL 9/2005 of 15 July 2005 from the Minister of Justice and the College of Public Prosecutors on the judicial approach on terrorism;
- The Joint Circular from the Minister of Justice and the College of Public Prosecutors on investigating judges specialized in terrorism (COL 18/2006), on the Threat Assessment Coordination Body (OCAM) (COL 2/2007), and on terrorist offences (COL 12/2013 of 20 June 2013);
- The Circular COL 10/2015 of 9 September 2015 on the judicial approach regarding FTF;
- The COL 11/2016 on the refusal of issuance, withdrawal and invalidation of identity cards from Belgians with a criminal record;
- The COL 12/2016 on the refusal of issuance and withdrawal of travel documents of persons with a criminal record.

14. Reference should also be made to the Joint Circular of 21 August 2015 from the Minister of Home Affairs and the Minister of Justice on the exchange of information and the follow-up of foreign terrorist fighters from Belgium.

15. The Working Group was offered more information on these measures but did not reply to this offer or ask more information on these matters.

c. Enhancement of the Federal Prosecutor's Office

16. The law of 5 February 2016 modifying the criminal law and the criminal procedure and containing various provisions regarding Justice (BOJ 19 February 2016) extends the number of federal magistrates from 24 (art. 215) to 28.

17. Moreover, 42 additional people joined the staff of the Federal Prosecutor's Office.

d. Coordination at the international level

18. With regards to international coordination and cooperation, it should be noted that Belgium is active both at the multilateral and bilateral levels.

19. Information on terrorism-related matters is actively exchanged with Eurojust. Furthermore, Belgium extensively contributes to the Europol and Interpol databases,

making maximum use of the different information exchange channels.Belgium is one of the most forthcoming countries in contributing information for analyses provided in this context. Belgium is also part of a 24/7 contact group dedicated to exchanges of police information that was established in the context of the Council of Europe Additional Protocol to the Convention for the Prevention of Terrorism.

20. Finally, Belgium has put in place a wide range of bilateral cooperation agreements both at the level of the judiciary and police services and is part of a number of formats of cooperation and coordination in this field, such as a quadrilateral initiative with Spain, France and Morocco.

e. 18 new measures (November 2015) to fight terrorism and extremist violence

21. Additional information on the measures and their implementation is available in the annex of the Addendum.

2. Prevention aspects

a. Consultation/Coordination mechanisms

22. Regular consultations are organised between the various levels of power in the Belgian state structure (federal, regional and local), within their own competence and finality, in the framework of a "holistic" or "chain" approach towards radicalization. The Framework document "Integral Security" and the "Radicalism Plan" define the nature and practicalities of cooperation between the different levels of power and related services. The Framework document stands for an integrated security policy, that entails a vertically and horizontally integrated approach. It strives to integrate as many security aspects as possible, across the different links of the security chain: from prevention to repression and the duty of care for the victims, the perpetrator and society as a whole. The approach to radicalization, violent extremism and terrorism (including the polarisation such phenomena can cause) is one of the 10 priority themes identified in the Framework document. The latter gives an important role with regards to prevention of radicalisation to the regional and community levels by giving them the room – within their portfolio of competences such as internal governance, well-being, education, youth, media and integration- to produce and implement their own policy with regards to prevention of radicalization. The checks and harmonization between the federal level and the regional and community levels as well as the exchange of best practices are organized within the structures defined by the "Radicalism Plan". In casu, the National taskforce set up by the Coordination Unit for Threat Analysis (CUTA/OCAM) and the Prevention Platform and working groups set up by the Federal Ministry of Interior.

b. The role of Education

23. Education is an exclusive competence of the Communities who have been deploying considerable efforts to reinforce schools, teachers and student counselors by offering them support and lines of action. The action of the three Communities has also extended in the international sphere through their active engagement in the development of initiatives on this particular topic in the framework of the Council of Europe. An illustration of this commitment, is the selection of Belgium as one of the countries to test the framework of descriptors attached to the new Council of Europe competence framework on citizenship and democracy.

24. Several initiatives that have already been taken in the field of education by the Flemish government looking at encouraging inclusive education and positive counter narratives are:

- The development of an Islam expert network that works on a counter-narrative for radical Islam and counters polarization, notably by clarifying interpretations of Islam and its norms and values to students, classes, teachers and/or first-line workers. The network works preventively by guiding (class) conversations on personal beliefs and Islam. Individual remediating actions are also possible in case signs of possible radicalization are detected by teachers or primary workers.

- The development of tools to support first-line workers and teachers that are confronted with the reality of radicalization, for example an online multimedia dossier on radicalization with tips and information on signal recognition, prevention, remediation and auxiliary channels.

- Within the Department of Education, a central contact point was established for schools and student guidance centers. A contact point for radicalization was also established within every school/student guidance center umbrella group to have a clear line of communication for information and knowledge exchange between the central authority and education institutions.

- The project CONNECT is active in schools were the resilience of teachers is stretched and aims at quickly establishing the necessary expertise in order to give back confidence, strengthen and (re)empower the teachers.

- In light of dialogue between different worldviews, the school umbrella groups and the different religious denominations have renewed their commitment to collaborate.

- In collaboration with the different school umbrella groups, different training initiatives were organized and offered to frontline workers and teachers on radicalization but also on strengthening vulnerable students notably through critical thinking and dialogue.

25. The Brussels Capital Region has also developed a number of modules that provide training to first-line workers and builds awareness also in the general public:

- Training in violent radicalism for stewards: this is a 5-day training course for municipality stewards. Proposed by the ERAP (Regional School of Public Administration), this training course helps to understand and detect the phenomena of violent radicalization and teaches stewards how to act in the frame of their mission. Launched in spring 2016, this training course will continue until 2018. It will also be adapted to other frontline municipal and para-municipal workers.

- An awareness module (1/2 day) on violent radicalization for frontline stakeholders awaiting professional training. This module is developed, adapted and taught by "Brussels - Prevention & Security" (by the regional coordinator) subject to demand and in support of local stakeholders (municipalities or associations).

- Several information modules or workshops are developed and organized by associations supported by the BCR. They target the general public or professionals (e.g.: the training provided by the non-profit association Dakira "Islam, Islamism, Jihadism", the play "Djihad", etc.) in support of municipalities.

c. 18 new measures (November 2015) to fight terrorism and extremist violence

26. Additional information on the measures and their implementation is available in the annex of the Addendum.

D. Social inclusion and diversified societies

27. The federal government as well as the governments of the federated entities are committed to guaranteeing a safe, open, inclusive and peaceful society. They do so by developing a smart mix of legal and policy measures that punish hate speech, incitement to violence, racism and xenophobia and strive to provide a level playing field and a dignified livelihood for all, guaranteeing possibilities of recourse for those individuals who feel they are being discriminated against. A number of measures have been put in place at all levels over the past decades but also in the aftermath of the FTF phenomenon, ranging from projects to promote diversity to hotlines and resilience tools for youth, social workers and family.

28. A recent example is the creation by the federal authorities of a permanent dialogue structure with the representatives of all officially recognized beliefs in Belgium, including Islam, to enable all concerned parties to exchanges views on a variety of topics, including integration. This is one of a variety of actions that have been taken over the years to ensure the integration and peaceful cohabitation of the main religions and beliefs present in Belgium and their followers. It is in this context that Islam was granted the status of officially recognized religion in Belgium in 1974 and that the Muslim Executive, representing the recognized practitioners of the Muslim faith in Belgium, was set up in 1996.

29. Aware of the tensions and misgivings that can arise amongst citizens in the aftermath of the attacks and other attempts to destabilize our society, preventative measures are now also being put in place at the regional and community level not only to ensure that vulnerable youths do not take the path of violent extremism, but also to ease tensions amongst communities, strengthen social cohesion and fight polarization. An example of such initiatives is the creation of one Flemish and two city-based agencies for integration and citizenship whose mission is to support, stimulate and accompany integration. They set up individual integration/citizenship trajectories for newcomers but also organize trainings and support processes and projects to increase the accessibility of regular organizations and services. They also support local authorities to set up actions that strengthen social cohesion. In addition, these agencies have the mission to support platforms working on the positive image of persons with a migration background and provide objective information on the matter.

30. In the Flemish region and community, the policy developed to counter radicalization also encompasses a pillar that looks at supporting the development of positive identities with Muslim youths. This happens on the one hand through financing of projects organized by youth associations and on the other hand by training teachers and first line social workers. "Motief vzw", an organization that has garnered substantial expertise in the field of society and religion or belief, receives Flemish support for the organization of a "train the trainer" program around identity development amongst Muslim youths. This way, first line social workers, teachers and employment consultants can support and accompany these youths in a better way as they develop their own identity. The onus of the training is set on the critical thought process, that supports these young people on their identity quest and stimulates critical citizenship.

31. On top of this, cities and municipalities receive direct financing from the different regional and community authorities to work on integration within their jurisdiction.

E. Human rights aspects

32. Since the creation of the UN, Belgium has been at the forefront with regards to human rights commitments as illustrated by its active engagement in the work of the Human Rights Council, the Universal Periodic Review, as well as its unwavering support for special procedures and treaty bodies. This commitment to the respect of human rights is implemented in our national policies where human rights, democracy and rule of law remain the ultimate benchmarks to which all policies and actions are measured.

33. Human rights, rule of law and democracy are principles that lie at the basis of Belgian society and are guaranteed by the Constitution, which explicitly mentions that the "enjoyment of the rights and freedoms recognised for Belgians must be provided without discrimination. To this end, laws and federate laws* guarantee among others the rights and freedoms of ideological and philosophical minorities".

34. It is in this spirit that a number of laws have been adopted and institutions created to ensure that these principles are implemented fully in practice and that individuals who feel that their rights have been violated have access to effective complaint mechanisms and remedy. As examples of anti-discrimination legislation, one can site the Belgian Anti-Racism Law, (Law of July 30, 1981 on the punishment of certain acts inspired by racism or xenophobia, a law against hate speech and discrimination which made certain acts motivated by racism or xenophobia illegal), the Collective Labor Agreement of 7 May 1996 Concluded by the Commission for Temporary Employment with Respect to the Code of Best Practices Relating to Racial Discrimination, the Law of 25 February 2003 Combating Discrimination (amending the Law of 15 February 1993 Founding the Centre for Equal Opportunities and Opposition to Racism), the Law of 10 May 2007 (amending the Law of 30 July 1981 and the Bill of 26 October 2006 Combating Certain Acts Inspired by Racism and Xenophobia), the Law of 10 May 2007 adapting the Judicial Code to the Legislation Combating Discrimination and Repressing Certain Acts Inspired by Racism or Xenophobia as well as a number of decrees and ordinances at the Flemish, Walloon, Brussels and French and German speaking regional community levels. The independent Centre for Equal Opportunities and Anti-racism was created in 1993. It has since been reformed and split into two institutions, UNIA (the Interfederal Centre for Equal Opportunities) and Myria, the Federal Migration Centre, both of which have the mandate to inform, analyze situations, accompany eventual victims of discrimination, and provide remediation and work towards remedy (including through filing a formal complaint to the courts). On matters related to the right to privacy, also relevant in the context of the fight against extremist violence and terrorism, one should also note initiatives such as the Privacy Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, which aims to protect individuals against abuse of their personal data by establishing rights and obligations of the individuals whose data are processed, as well as the rights and obligations of those processing the data. The Privacy Act also established an independent supervisory authority: the Commission for the Protection of Privacy, which ensures that personal data are used and protected with due care, so that citizens' privacy remains safeguarded.

35. Police services are required, in the execution of their mission, to respect the Belgian and International judicial framework, including provisions that protect human rights. The effective implementation of these provisions is ensured at multiple levels: in the legal and regulatory framework applicable to the police corps and services as well as in the Human Resources policy that is applied within the police corps. The respect of human rights by police officers is constantly evaluated and sanctions are applied through statutory evaluation procedures or the recourse to disciplinary or criminal proceedings.

36. The respect of human rights is a guiding thread throughout the training of police officers at every stage of their career. Some specific examples of trainings oriented towards

human rights are the "Salduz" training that was provided following the Salduz Law of August 3th 2011, the training for the reference officers in charge of matters relating to discrimination and hate offences or crimes (following a Circular note drawn up by the College of Public Prosecutors in 2013), and the training matters relating to the Holocaust and human rights (developed in cooperation with the Kazerne Dossin[1]) which was put in place to reinforce the training and awareness of police officers to issues of citizenship, democratic values and the defense of individual freedoms and human rights, as well as to the issues of exclusion, xenophobia and the importance of autonomous thinking. The police is pursuing its efforts to reinforce both qualitatively and quantitatively the Human Rights training at all levels, including training specifically dedicated to non-discrimination, prohibition of torture and respect for diversity. This work is done in cooperation with independent external experts such as experts working with UNIA, the independent public institution combating discrimination and promoting equal opportunities.

37. Regular consultation with civil society and independent experts and bodies on the topics at hand by all levels of power in Belgium also ensure that eventual issues related to Human Rights are quickly identified and can be addressed. As an example of the work of authorities with civil society organizations one can cite the Brussels regional associative platform. Since April 2016, associations that benefit from support from the Brussels Capital Region - either through subsidies or through staff - meet under the auspices of the "Brussels - Prevention & Security" unit. This platform's associations are active in a multitude of fields (individual support, collective support, development of tools, training courses, guidance) and their actions either directly or indirectly target citizens concerned by the phenomenon of radicalization throughout the entire chain of the process. This platform also has many objectives:

- to strengthen the territorial presence and local integration of associative stakeholders;
- to ensure appropriate guidance for the people concerned;
- to create synergies between actors in the field;
- to be a resource for municipal prevention services (support, information and training).

38. Occasionally, the associative platform is associated with the regional radicalism platform. This will mainly happen in the context of the training of stakeholders from the associative sector or the presentation of tools and projects developed by associations to police zones and municipalities.

39. The relevant units working on radicalization at the federal and community or regional level are also in regular contact with think-tanks, policy tanks, academics and practitioners from Flanders, Wallonia, Brussels, Europe and the rest of the world that could potentially intervene in platforms or provide advice on good practices. As an example of this, on can mention that in May 2016, the Brussels Prevention unit signed a cooperation agreement with the Quebec Centre for Prevention of Radicalization Leading to Violence (CPRLV). This provides mainly for the development of support and training tools and the exchange of good practices. This exchange is conducted in association with the French speaking Community of Belgium in the frame of the development of its support centre.

[1] a museum and place of commemoration that deals with the persecution of Jews and gypsies in Belgium in the run up to and during the 2nd World War and looks into matters of mass violence in general

F. Additional clarifications

1. Definition of Foreign terrorist fighters

40. The Belgian authorities wish to add the following explanatory comments with regards to the issue of the definition of a foreign terrorist fighter and the contents of paragraphs 45, 46 and 47 of the report of the Working Group:

41. Regarding para. 45 of the report: Belgium takes the view that members of an organized armed group, which is a party to an armed conflict not of an international character, lose their protection as long as they are members of such an organized armed group, while civilians lose their protection only when they directly participate in hostilities.

42. Regarding para. 46 and 47 of the report: it is unclear why for the specific case of Belgium the Working Group wants to lay particular emphasis on the distinction between foreign terrorist fighters on the one hand, and foreign fighters per se on the other hand. It is unclear how the Working Group came to the conclusion that Belgium is "seeking to apply UN Security Council Resolution 2178 extensively [sic] in its national efforts". The competent authorities will, in any case, assess the situation of any foreign fighter as to determine whether this individual falls under the scope of application of the Belgian criminal legislation.

2. De-radicalization in prisons

43. The Belgian authorities are aware of the challenges posed by radicalization in prisons and support the Council of Europe project that has been developed specifically on this issue in the framework of the Council of Europe Action Plan on the fight against violent extremism and radicalization leading to terrorism.

44. On the domestic front, it should be noted that the Action Plan against Radicalization in Prisons of March 2015 is being implemented. In particular, two special sections have been opened in the prisons of Ittre and Hasselt to deal with radicalized inmates showing a high risk of radicalizing others. Other offenders, who are condemned or suspected for related crimes, are spread over the prisons to avoid further effect on others. At the same time the Ministry of Justice is currently working on attracting more Islam-consultants that are capable of preventing and stopping processes of radicalization within the prisons.

45. De-radicalization is seen as an individual process where there is a theological aspect to address, an important role for a mentor (focus on re-integration) and if possible the positive involvement of the family (or significant other). Multiple initiatives have been taken in this regard at the regional and community level as well. The Flemish government has decided to support its actions (help and services) in the prisons by recruiting two experts on radicalization. These experts can advise other employees, but they will also take the leading role in the de-radicalization of these inmates. In their strategic plan on help and support to prison detainees that was adopted in July 2015, the Flemish authorities also commit to taking on the issue of radicalization in prisons together with the Ministry of Justice and the Flemish platform for radicalization. More people will be hired to put in place individualized accompaniment trajectories with radicalized detainees and to provide professional help to service providers in Flemish and Brussels prisons as well as Flemish and Brussels judicial assistants who are confronted with radicalized detainees and ex-detainees with a view on disengaging them from their radicalism and reintegrating them into society. The Wallonia-Brussels Federation has on its end decided to create a center to help and assist people concerned by violent radicalism. Currently the Walloon and Brussels authorities are still in the exploratory phase and have established numerous contacts with

professionals in the field (police services, magistrates, academics, civil society stakeholders, administrative and religious authorities). Study travels focusing on foreign experiences have also been organized to Denmark, Canada, France, Germany, etc.